

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANNE L. KELLEY et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION, a Washington
corporation,

Defendant.

No. C 07-475 MJP

DECLARATION OF STEPHEN M.
RUMMAGE IN SUPPORT OF
MOTION FOR PROTECTIVE
ORDER

Noted for Consideration:
October 15, 2008

Stephen M. Rummage declares as follows:

1. I am an attorney of record for defendant Microsoft Corporation in this action.

2. On September 19, 2008, Plaintiffs' counsel wrote me and my co-counsel, Charles Casper, and requested dates for the depositions of Steven A. Ballmer, Microsoft's Chief Executive Officer, as well as for Jim Allchin, formerly Microsoft's Co-President, Platform Products & Services; Will Poole, formerly Microsoft's Senior Vice President, Windows Client Business; and Rajesh Srinivasan, a Microsoft employee who was, at the relevant time, Senior Product Manager in the Windows Client Product Management Group. Plaintiffs asked for available dates during the weeks of October 6 and October 13, 2008.

3. We immediately contacted witnesses to determine their availability. On September 23, 2008, I sent an email to Plaintiffs' counsel, advising that (a) we believed we could make Mr. Allchin available for deposition on October 7, 2008; (b) we could make Mr.

1 Poole available for deposition on October 10, 2008; and (c) we could make Mr. Srinivasan
2 available for deposition on October 16, 2008. (The depositions have now been confirmed for
3 those dates and will proceed.) In the same email, I told Plaintiffs' counsel that we wanted to
4 discuss their request for Mr. Ballmer's deposition.

5 4. Before speaking with Plaintiffs' counsel, we reviewed the produced documents
6 to confirm our understanding that Mr. Ballmer had, at most, limited involvement with the
7 Windows Vista Capable Program. We also researched the law to understand the
8 circumstances under which courts require CEOs to appear for deposition.

9 5. On September 25, 2008, I spoke with two of Plaintiffs' counsel, Will Smart of
10 the Keller Rohrback firm and Mark Wilner of the Gordon Tilden firm. In that conversation, I
11 tried to persuade Messrs. Smart and Wilner that Mr. Ballmer's deposition was unnecessary
12 and, under the case law, inappropriate. After briefly describing our understanding of the law,
13 I told them that Mr. Ballmer had no unique or superior personal knowledge of any disputed
14 facts, asked them to explain why they thought Mr. Ballmer's testimony was necessary, and
15 requested that Plaintiffs rethink their request to depose Mr. Ballmer. Mr. Smart responded by
16 telling me, in effect, that we did not need to discuss the matter further and asked me (at least
17 twice) to agree that Microsoft had no choice but to bring a motion for a protective order,
18 presumably because of Mr. Ballmer's position. Mr. Wilner, on the other hand, elaborated that
19 Plaintiffs believe Mr. Ballmer has unique knowledge that they could not get elsewhere. He
20 referred specifically to a phone call (which he did not identify) about which only Mr. Ballmer
21 could testify. I disagreed and told him that I was unaware of any relevant topic on which Mr.
22 Ballmer has unique knowledge.

23 6. Several times during this conversation, Mr. Wilner asked me to provide dates
24 when Mr. Ballmer would be available if his deposition were to be ordered. I asked whether
25 Plaintiffs wanted a full day of deposition. They confirmed that they did. I told them that we
26 had been informed that Mr. Ballmer (not surprisingly) did not have a free day on his calendar
27 before the November 14, 2008, discovery cut-off.

7. At the conclusion of this conversation, I told Messrs. Smart and Wilner that it appeared we would need to bring this issue before the Court, either through a motion for a protective order or a joint Local Rule 37 submission. Plaintiffs agreed with me that the Court would need to decide this dispute.

8. On September 26, 2008, Plaintiffs served a deposition notice for Mr. Ballmer, noting his deposition for October 22, 2008, long before Mr. Ballmer has a free day on his calendar. I am attaching a true and correct copy of that deposition notice as Exhibit A.

9. I certify that the parties attempted in good faith to resolve this dispute during the telephone conversation described above but were unable to do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 3, 2008.

/s/ Stephen M. Rummage
Stephen M. Rummage

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2008, I electronically filed the foregoing Declaration of Stephen M. Rummage in Support of Motion for Protective Order with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jeffrey I. Tilden:	jtilden@gordontilden.com
Jeffrey M. Thomas:	jthomas@gordontilden.com
Michael Rosenberger:	mrosenberger@gordontilden.com
Mark A. Wilner:	mwilner@gordontilden.com
William C. Smart:	wsmart@kellerrohrback.com
Mark A. Griffin:	mgriffin@kellerrohrback.com
Ian S. Birk:	ibirk@kellerrohrback.com

DATED this 3rd day of October, 2008.

Davis Wright Tremaine LLP
Attorneys for Defendant

By /s/ Stephen M. Rummage
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EXHIBIT A

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DIANNE L. KELLEY, KENNETH HANSEN,
JIM WALTERS, MATT MORALES,
RUSSELL HALL, and DON SCHRODER,
individually and on behalf of others similarly
situated,

Plaintiffs,

v.

MICROSOFT CORPORATION, a Washington
Corporation,

Defendant.

NO. C07-0475 MJP

NOTICE OF DEPOSITION OF
STEVE BALLMER, BY
VIDEOTAPE

CLASS ACTION

TO: All Parties herein;

AND TO: Their Attorneys of Record

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the testimony of
STEVE BALLMER, will be taken upon oral examination for all purposes permissible under the
Civil Rules, at the instance and request of Plaintiffs in the above-entitled action, before a Notary
Public, at the law offices of Gordon Tilden Thomas & Cordell LLP, 1001 Fourth Avenue, Suite
4000, Seattle, Washington 98154, or at some otherwise mutually agreed-upon place on

NOTICE OF DEPOSITION OF STEVE BALLMER, BY
VIDEOTAPE- 1
No. C07-0475 MJP

GORDON TILDEN THOMAS & CORDELL LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154
Phone (206) 467-6477
Fax (206) 467-6292

1 Wednesday, October 22, 2008, at 9:00 a.m., the said Oral Examination to be subject to
2
3 continuance or adjournment from time to time or place to place until completed.
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5 DATED this 26th day of September, 2008.
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7 **GORDON TILDEN THOMAS & CORDELL LLP**
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10
11 By 
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13 Jeffrey I. Tilden, WSBA #12219

14 Jeffrey M. Thomas, WSBA #21175

15 Mark A. Wilner, WSBA #31550
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17 **KELLER ROHRBACK L.L.P.**
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19
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21 By 
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23 William C. Smart, WSBA #8192

24 Ian S. Birk, WSBA #31431
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26 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2008, I served the foregoing on counsel for Defendant via email.

Counsel for Defendant Microsoft Corporation

Stephen M. Rummage, WSBA #11168
Cassandra L. Kinkead, WSBA #22845
Charles S. Wright, WSBA #31940
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**Counsel for Defendant Microsoft Corporation
- Admitted Pro Hac Vice**

Charles B. Casper
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123 South Broad Street
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Jacqueline Lucien, Legal Secretary